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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT G. GARCIA,

Defendant and Appellant.

H042041

(Monterey County
Super. Ct. No. SS141433A)

I. INTRODUCTION

Defendant Vincent G. Garcia¹ was convicted after jury trial of conspiracy to possess methamphetamine for sale (Pen. Code, § 182, subd. (a)(1));² Health & Saf. Code, § 11378), conspiracy to commit a felony by active street gang participants (§ 182.5), and active participation in a criminal street gang (§ 186.22, subd. (a)). As to the conspiracy for possession for sale, the jury further found true a gang allegation (§ 186.22, subd. (b)(1)(A)). Defendant admitted that he had suffered two prior serious felony convictions that also qualified as strikes (§§ 667, subd. (a)(1), 1170.12, subd. (c)(2)). After the trial court denied defendant's motion to strike his two strike priors pursuant to

¹ Defendant is referred to in the record as "Vincent Gerald Garcia" and "Vincent Joe Garcia."

² All further statutory references are to the Penal Code unless otherwise indicated.

People v. Superior Court (Romero) (1996) 13 Cal.4th 497 (*Romero*), it sentenced him to 25 years to life consecutive to 10 years.

On appeal, defendant contends that the trial court abused its discretion when it denied his *Romero* motion because, among other reasons, his prior strike convictions for first degree burglary in 1986, and for attempted murder in 1999, were “well in the past” and his instant offense for conspiracy to possess a controlled substance for sale was a “passive offense.”

For reasons we will explain, we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant was charged by amended information with conspiracy to possess a controlled substance for sale (§ 182, subd. (a)(1); Health & Saf. Code, § 11378; count 1), conspiracy to commit a felony by active street gang participants (§ 182.5; count 2), and active participation in a criminal street gang (§ 186.22, subd. (a); count 3). All three offenses were alleged to have been committed on or about April 1, 2013 through May 23, 2013. Regarding count 1, conspiracy to possess a controlled substance for sale, the information alleged three overt acts: “accepting profits from drug sales,” “putting money from drug sales on books of Nortenos in prison,” and “communicating with Omar Ramirez re[garding] drug money.” The information also alleged that defendant committed count 1 for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)). The information further alleged that defendant had two prior serious felony convictions that also qualified as strikes (§§ 667, subd. (a)(1), 1170.12, subd. (c)(2)).

A. The Trial Evidence

The court granted defendant’s request for a bifurcated trial on the alleged prior convictions, and defendant waived his right to a jury trial on the alleged priors. The evidence presented regarding the charged offenses at the jury trial in December 2014, included the following.

Defendant is an admitted member of Nuestra Familia. Nuestra Familia is a gang that formed in prison. Membership in Nuestra Familia is a lifetime commitment, and members are expected to put the organization above all else, including family. A “removal” occurs when a member is not in good standing with the gang and is attacked or murdered by the gang. Common criminal activities of Nuestra Familia include murder, assault with deadly weapons, sales of controlled substances, and transferring or selling firearms to convicted felons.

Prison officials had placed Nuestra Familia members in administrative segregation in an attempt to reduce violence and the gang’s influence in the general prison population. In response, the gang created a subgroup in order to have power in the general prison population. The subgroup was called Nuestra Raza. It has been referred to as “Northern Structure” by the California Department of Corrections, and is now known as Norteños. This subgroup is subservient to Nuestra Familia. A lower level gang member, or other person on the street who is willing to do the bidding of Nuestra Familia, was formerly known as a Norteño and is now known as a Northerner.

Prison gangs make most of their money in the general prison or jail population. They engage in drug sales, gambling, and extortion.

Outside of prison, “regiments” are set up to engage in activities for the gang. Regiments generate money for the gang and assault people who are against the gang. Regiments make most of their money through drug sales, which is their “bread and butter” crime.

The person in charge of a regiment is generally referred to as a regiment commander or leader, depending on whether the person is a Nuestra Familia or Nuestra Raza member. Although regiment commanders may commit assaults or shootings, they will often direct lower level members to do those crimes.

A percentage of a regiment’s earnings is collected by the regiment commander. The money is then sent to incarcerated Nuestra Familia members, who are rarely out of

custody, and is placed “on the books,” meaning in their prison accounts. The remainder of the money is “reinvest[ed]” into the regiment for guns, drugs, and so forth. Regiment commanders might also retain some of the money for themselves.

The former regiment leader for another county testified that defendant was the regiment commander of Monterey County. In December 2011, the two met face-to-face along with another gang member. They discussed drug sales, including having members from defendant’s regiment sell drugs in the county of the other regiment, as well as the circumstance under which defendant would continue “educating” the regiment leader from the other county about Nuestra Familia.

A former member of Salinas East Market (SEM), a subset of the Norteño criminal street gang, testified that he was allowed to keep only a portion of the proceeds from his drug sales. SEM was “taxed” for selling drugs, and the taxes were collected by Omar Ramirez, who had authority over SEM members. When Ramirez exercised authority over SEM members, including collecting taxes from them, he would refer to defendant and say it was “per Chente,” which was defendant’s nickname. It was understood that defendant had control of the regiment and “runs the town,” meaning that he “controls everything that goes on, all the drug selling, to the crimes and everything.” The former SEM member saw Ramirez and defendant together in 2012 or 2013.

A former gang member of Fremont Street (Fremont), a subset of the Norteño criminal street gang in Salinas, testified that Fremont is affiliated with Nuestra Familia and that the Fremont gang paid monthly dues to the regiment. After an incident involving drugs, the Fremont gang was subject to additional attention by Nuestra Familia. The gang member attended a meeting in 2009 where defendant, who was a Nuestra Familia regiment commander, told the gang member, “I expect good contributions.” The gang member understood defendant to mean that the monthly amount being paid to the regiment was not sufficient, and that more had to be paid because of Fremont’s drug sales. Thereafter, a greater monthly amount was paid by Fremont gang members.

During one month in 2011, the gang member personally gave money to defendant while outside defendant's house.

The Fremont gang member also testified that in 2011, while he was in prison, defendant gave him a directive over the phone to remove by violence another member from the gang because that other member had failed to participate in a fight. The Fremont gang member carried out the removal.

The Fremont gang member further testified that while he was in prison, he was given separate, conflicting instructions to report upon release to defendant and to Trinidad Pimental. Defendant was associated with Nuestra Familia members in state prison, while Pimental was associated with Nuestra Familia members in federal prison. After being released from prison, the Fremont gang member reported to Pimental, who had gained the alliance of the Fremont gang.

A few months later, in October 2012, the Fremont gang member was arrested for robbery and placed in county jail, where there was tension between those loyal to Pimental and those loyal to defendant. Defendant was later in county jail at the same time, and he conducted an investigation into Pimental's regiment and his supporters. Defendant and the Fremont gang member had discussions about the regiment and Pimental.

In April 2014, while still in county jail, the Fremont gang member was removed from the gang by being stabbed repeatedly. He believed his removal was due to his support of Pimental. Jail personnel had warned him before he was housed in the same jail pod as defendant that kites, which are written communications by inmates, had been found authorizing his removal, but the Fremont gang member refused to believe it. Later, during one of his conversations with defendant, defendant indicated he was going to get removed. Defendant also smiled at him while he was being stabbed in the jail yard. The Fremont gang member testified that defendant is the highest ranking Norteño gang

member in Monterey County and that defendant was the only person in the Monterey County jail who could authorize the Fremont gang member's removal.

Law enforcement conducted an investigation into narcotics activity by the Norteño criminal street gang. The investigation included surveillance and wire taps. Through the investigation, law enforcement believed that Omar Ramirez, a Norteño gang member, was getting narcotics from Jaime Perez, another Norteño gang member. Ramirez would then sell the narcotics to others, and a portion of the proceeds was forwarded up the chain of command to defendant, who was a "regimental commander" and the highest ranking Nuestra Familia member in Monterey County.

For example, in April 2013, based on text messages between Ramirez and Perez, law enforcement believed a narcotics transaction was going to take place, with Perez delivering drugs to Ramirez. Law enforcement initiated a traffic stop on Perez before he could deliver anything, and a parole search was conducted. Perez was found in possession of more than 13 grams of methamphetamine. People who buy methamphetamine for personal use generally buy smaller amounts such as 0.1 or 0.2 grams. Perez was ultimately convicted of a controlled substance offense with a gang enhancement.

In April 2013, Ramirez talked to Norteño gang member Paul Gabriel Leyba by phone. Ramirez directed Leyba to pay a certain person the proceeds from narcotic sales by Leyba and his crew, and the person would give the money to Ramirez. Leyba was ultimately convicted of several crimes, including possession of controlled substances for sale with a gang enhancement.

Law enforcement believed that Ramirez gave narcotics to Maria Delarosa, who would sell the narcotics and then give the profits to Ramirez, who forwarded the money up the chain of command. On April 25, and 29, 2013, Ramirez and Delarosa communicated by phone. On April 25, 2013, law enforcement observed them meeting in person and appearing to engage in a hand-to-hand narcotics transaction, with Ramirez

removing an object from his shoe and apparently passing it to Delarosa. On April 29, 2013, Ramirez and Delarosa were again observed meeting and engaging in a hand-to-hand drug transaction. A traffic stop was initiated on Delarosa's vehicle. She was searched and found to be in possession of more than 13 grams of methamphetamine.

In the meantime, on April 8, 2013, defendant sent a text message to Ramirez, warning him that the gang task force and other law enforcement were at a particular store's parking lot, and to let the "homies" know. Ramirez responded, "K." On April 28, 2013, defendant warned Ramirez by text message of increasing activity by the gang task force and to be "cautious" because it was "going to get hot out there." The next day, defendant texted Ramirez the location of police who were "on both side of street [sic]." On May 1, 2013, defendant sent text messages to other phone numbers warning about police heading to a certain area in Salinas.

On May 14, 2013, defendant and Ramirez had a phone conversation regarding the collection of monthly dues for narcotic sales by other gang members. Ramirez was ultimately convicted of conspiracy, controlled substance, and gang crimes that were committed in April and May 2013.

Salinas Police Officer Todd Kessler testified as an expert in the investigation of Norteño gang-related crime in Monterey County. Officer Kessler testified that certain gang members, such as Ramirez, were "foot soldiers." Foot soldiers "do the dirty work of the Norteno criminal street gang." In that role, "it's very common for the foot soldiers to be caught with the guns and the drugs and other evidence of illicit activity" as opposed to the regimental commander, who "wants to insulate himself from that."

Defendant's residence was searched pursuant to a search warrant on May 23, 2013. The letters "NF" were written in the garage. More than 300 kites were also located at defendant's residence. Although none of the kites at defendant's residence were expressly addressed "to [defendant]," the kites had titles such as "AIC" (authority in charge), "reg authority" (regiment authority), and "management," which referred to or

addressed a person in a leadership position. The kites were dated as recently as April 2013. The kites included “rosters,” which provide information about gang members who are in custody, and “incident reports,” which provide updates regarding ongoing criminal activity and other information upon which Nuestra Familia leaders may use in making decisions for the gang. Some of the kites did not appear to have been opened.

Defendant was arrested on May 23, 2013, the same day that the search warrant was executed. He was interviewed that day at the Monterey County Sheriff’s Office, and again on May 28, 2013, at the county jail. He was advised of his *Miranda* rights³ on both occasions. Defendant admitted he was an active member of Nuestra Familia. He stated that he was an “advisor” to the Norteños and that gang members sought his advice regarding street and jail matters. Defendant admitted that he received money, as well as narcotics, from other gang members, but he stated that no one was required to pay him a certain amount. He claimed that the amount of money he received from the Norteño gang as a whole ranged from \$20 to \$200. Defendant knew that gang members sold narcotics and that some of the people who gave him money had been arrested for narcotic sales. He claimed to not know whether the money he received came from drug sales, but that it could be for all he knew and that he never asked questions. Defendant stated that he spent the money as he wished and on himself, including the money that Ramirez gave him from the gang. Defendant also stated that he put the money he received on the accounts of other inmates in jail or in prison, to help them with their everyday living while in custody and to help them fight their court cases.

Campbell Police Sergeant Dan Livingston testified as an expert on Nuestra Familia. Sergeant Livingston opined that defendant is an active Nuestra Familia member based on materials located at defendant’s residence, defendant’s tattoos, statements by

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

other gang members, statements by law enforcement who have had contact with defendant, and admissions by defendant about being a Nuestra Familia member. Sergeant Livingston indicated that, based on the “massive” number of kites and the titles on the kites at defendant’s residence, it was consistent with defendant being regiment commander or in a leadership position, and inconsistent with him being on a break or retired from the organization. According to Sergeant Livingston, leaders will hold on to kites while they are gathering information and reviewing material before making a decision, and to later justify their actions. Sergeant Livingston testified that defendant had been the regiment commander of Monterey County since at least 2011.

Defendant did not testify at the jury trial.

B. The Verdicts and the Admissions on the Priors

On December 19, 2014, the jury found defendant guilty of all three counts: conspiracy to possess a controlled substance, methamphetamine, for sale (§ 182, subd. (a)(1); count 1), conspiracy to commit a felony by active street gang participants (§ 182.5; count 2), and active participation in a criminal street gang (§ 186.22, subd. (a); count 3). As to count 1, the jury found true the allegation that defendant committed the conspiracy for the benefit of, at the direction of, or in association with the Norteño criminal street gang (§ 186.22, subd. (b)(1)(A)). On January 7, 2015, defendant admitted allegations that he had suffered two prior serious felony convictions that also qualified as strikes (§§ 667, subd. (a)(1), 1170.12, subd. (c)(2)).

C. The Probation Report

The probation report summarized defendant’s prior criminal record. Defendant was convicted of first degree burglary in 1986 and attempted murder in 1999, as well as various other offenses, primarily misdemeanors, within that timeframe. Defendant’s prior performance on probation and parole were “unsatisfactory.”

In an interview by the probation officer, defendant acknowledged the influence he had over other gang members and explained that it was the result of his involvement in

gangs for many years. He stated that he was “jumped into” the Salinas East Market set of Norteños in approximately 1977 when he was 10 years old, and joined the Northern Structure prison gang between 1986 and 1987. Regarding the kites found in his home, defendant claimed that he did not read all of them, and that he merely rendered “advice” in response to them, not directives. Defendant stated that the case against him was based on narcotic sales by Omar Ramirez and Ramirez’s questions to defendant about contributions. Defendant reiterated that he was being sought for advice or information, rather than issuing directives.

D. The Romero Motion and Opposition

Defendant filed a *Romero* motion requesting that the trial court strike his prior strike convictions for burglary and attempted murder. His request was based on the “excessive age” and “disparate nature” of the prior convictions. Defendant contended that he had not suffered a felony conviction since 1999, and that his prior strike convictions “stem[med] from a completely different course of conduct” than the instant case involving gang-related conduct. He also argued that the instant case involved offenses of a “less serious nature” than his prior convictions, and that the instant three offenses arose “from the same . . . act or acts, not three separate, distinct violations.” Defendant further contended that his background, character, and prospects supported striking his prior strikes, including the facts that he was a 48-year-old man engaged to be married, he had been doing flooring and tile work and would be able to resume that job upon his release, and he had the support of his family and friends. He also argued that “any public safety concerns can be allayed by the significant term that will already be imposed” if the prior strikes were stricken. In support of the motion, defendant included letters from family members describing the positive impact he had had on their lives.

The prosecution filed written opposition to defendant’s *Romero* motion. Regarding defendant’s instant offenses, the prosecution contended that defendant was a “leader” within the Nuestra Familia gang; that he willfully promoted, furthered, assisted,

and benefitted from felonious criminal activity of the gang; and that he gave directives, profited from violence, and was a danger to the community.

The prosecution also referred to defendant's criminal record, which included first degree burglary in 1986, attempted murder approximately 10 years later, and other convictions between those offenses. Defendant's parole was also repeatedly revoked. The prosecution argued that the 1986 burglary conviction was "not remote when the Court takes into consideration the regularity of parole revocations and continuing offenses." Although defendant was discharged from parole in 2010, and had avoided incarceration for criminal activity until he was arrested in May 2013, the prosecution argued that defendant "was an active [Nuestra Familia] member during this time period." The prosecution further contended that defendant's prior conviction for attempted murder was in association with other Nuestra Familia members.

The prosecution further argued that there was nothing in defendant's background or character that warranted striking his strikes. The prosecution observed that, according to the presentencing report, defendant admitted reading the kites and providing advice although not directives. The evidence at trial established that he had received money from gang members as a result of his position in Nuestra Familia, and that he issued directives while in jail. According to the prosecution, the only conclusion to be drawn was that defendant would continue his role in the gang and continue to give advice or directives, and thereby assist the gang's activities. The prosecution contended that defendant was a danger to the community and "squarely within the spirit" of the Three Strikes law.

E. The Romero Hearing/Sentencing

The trial court held a hearing on defendant's *Romero* motion on February 20, 2015. Defendant argued that he had not suffered a felony conviction in approximately 16 years, and that his first strike conviction was 29 years ago. He referred to the letters portraying his character in a positive light, and he referred to his strong family ties and

employment prospects in the flooring business. Regarding the instant case, defendant contended that the evidence of the conspiracy to sell controlled substances “amounted to text messages and phone calls, none of which were that explicit,” that it was “almost passive conduct” on his part, and that it involved “very disparate conduct” from the prior burglary and attempted murder convictions. Defendant further argued that even if his prior strike convictions were stricken, the same two prior convictions would still provide a basis for imposing two serious felony enhancements under section 667, subdivision (a), for an additional 10 years on his sentence.

The prosecution contended that defendant had been involved in gangs all his life, that he was an active member of Nuestra Familia, and that he was a regiment commander within that gang. The prosecution argued that defendant had lived a “continuous life of crime,” and that that was the basis for him attaining the rank of regiment commander in a notorious street or prison gang.

The prosecution observed that the probation report from defendant’s attempted murder case indicated that the crime involved defendant and several other Nuestra Familia members conspiring to commit the murder of another individual. The prosecution argued that defendant had “no other felonies since [then]” because he had reached a “certain status” within the gang where he “no longer [had] to get [his] hands dirty.” According to the prosecution, with defendant’s status, he made the “big decisions” and “tells people what to do.” The prosecution pointed to the evidence at trial that defendant had ordered the removal of a gang member who was subsequently assaulted in jail.

The prosecution contended that defendant could not therefore be separated from the actions of the gang, and that it was a “mischaracterization” of the evidence and of the trial to say that defendant had not been involved in any felonies since the prior attempted murder conviction. The prosecution argued that defendant had been charged with a conspiracy related to the sale of illicit drugs, that it involved proceeds that were

“funneled up to higher ranking members of [Nuestra Familia],” and that Nuestra Familia members gave directives to commit various crimes. In other words, the case was “not just about the sale of drugs,” but about the sale of drugs “for the benefit of, at the direction of, or in association with the Norteno criminal street gang.” The prosecution further argued that defendant would continue to be in a high ranking position in Nuestra Familia even in prison. The prosecution concluded that defendant’s strikes should not be stricken.

The trial court denied the motion, finding it could not “say [defendant was] outside of the spirit of the [Three Strikes] law.” The court explained that it did not view defendant’s prior convictions “in isolation.” The court found it to be “overwhelmingly clear” from the evidence at trial that defendant is a Nuestra Familia member. Further, defendant had been convicted of a conspiracy regarding the sale of narcotics, with a gang enhancement. The evidence at trial reflected that “the sale of drugs is one of the life bloods of the gang,” and thus defendant’s conduct was not “de minimus conduct when placed in the context of a criminal street gang.” Regarding defendant’s background, character, and prospects, the court determined that defendant “has spent a lifetime committed to the Norteno criminal street gang,” that he “maintains a leadership role,” and that he “continues to function within that criminal structure, both in and out of prison.” The court also stated that there was “[n]ecessarily” an “inference, if you believe the testimony that was presented at the trial, as to how one achieves promotions . . . within the gang and advancements within the gang.”

The trial court sentenced defendant to a total prison term of 35 years to life. The sentence consists of 25 years to life for count 1 (conspiracy to possess a controlled substance for sale), plus two five-year terms for the two prior serious felony enhancements (§ 667, subd. (a)(1)). The court stayed the sentences on counts 2 and 3 pursuant to section 654.

III. DISCUSSION

On appeal, defendant contends the trial court abused its discretion in denying his *Romero* motion. Defendant argues that his two strike convictions were “well in the past,” and that his instant conviction for conspiracy to possess a controlled substance for sale was a “passive” offense that did not involve injuries. He also points to his age at the time of sentencing (48 years old), his stable home and family life, his employment, and the “positive impact” he had on younger family members as reflected in letters submitted to the trial court.

The Attorney General contends that the trial court acted within its discretion by denying defendant’s *Romero* motion. According to the Attorney General, defendant was not a “passive participant” in this case but involved at a high level in the distribution and sale of drugs by Nuestra Familia in Monterey County. Regarding defendant’s criminal history, the Attorney General observes that, in addition to the two prior serious felony convictions, defendant has also suffered another felony conviction and several misdemeanor convictions, and that he violated parole on several occasions and violated probation. Regarding defendant’s background, character, and prospects, the Attorney General points to defendant’s long-term involvement and leadership role in a gang, even after a prior prison commitment.

“ ‘[A] trial court may strike or vacate an allegation or finding under the Three Strikes law that a defendant has previously been convicted of a serious and/or violent felony, on its own motion, “in furtherance of justice” pursuant to . . . section 1385[, subdivision] (a).’ [Citation.]” (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*)). A court’s decision whether to strike a qualifying prior conviction is discretionary. (*Id.* at p. 375.)

However, “ ‘[t]he Three Strikes initiative, as well as the legislative act embodying its terms, was intended to restrict courts’ discretion in sentencing repeat offenders.’ [Citation.] To achieve this end, ‘the Three Strikes law does not offer a discretionary

sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court “conclud[es] than an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.” ’ [Citation.]” (*Carmony, supra*, 33 Cal.4th at p. 377.) In order to determine whether an exception to the Three Strikes law should be made, “ ‘the court in question must consider whether, in light of the nature and circumstances of [the defendant’s] present felonies and prior serious and/or violent felony convictions, and the particulars of [the defendant’s] background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though [the defendant] had not previously been convicted of one or more serious and/or violent felonies.’ [Citation.]” (*Carmony, supra*, at p. 377.)

“[A] trial court’s refusal or failure to dismiss or strike a prior conviction allegation under section 1385 is subject to review for abuse of discretion.” (*Carmony, supra*, 33 Cal.4th at p. 375.) “In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ‘ “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” ’ [Citations.] Second, a ‘ “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ ” ’ [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377.)

“[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation].” (*Carmony, supra*, 33 Cal.4th at p. 378.) An abuse of discretion also occurs where the trial court “strikes a sentencing allegation[] solely ‘to accommodate judicial convenience or because of court congestion,’ ” or “simply because a defendant pleads guilty.” (*Romero, supra*, 13 Cal.4th at p. 531.)

Moreover, in attempting to establish an abuse of discretion by the trial court, “ ‘[i]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations. [Citation.] Where the record is silent [citation], or ‘[w]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance’ [citation]. Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary. Of course, in such an extraordinary case—where the relevant factors . . . manifestly support the striking of a prior conviction and no reasonable minds could differ—the failure to strike would constitute an abuse of discretion.” (*Carmony, supra*, 33 Cal.4th at p. 378.)

We do not believe that this is an extraordinary case where the relevant factors manifestly support the striking of defendant’s prior convictions and no reasonable minds could differ. (*Carmony, supra*, 33 Cal.4th at p. 378.) The trial court apparently recognized the age and nature of defendant’s prior strike convictions but properly

observed that those prior convictions could not be viewed “in isolation.” Turning to the evidence in the current case, the court found it “overwhelming clear” that defendant is a Nuestra Familia member. The court stated that “the sale of drugs is one of the life bloods of the gang,” that defendant’s current convictions included a conspiracy regarding the sale of narcotics with a gang enhancement, and that defendant’s conduct was therefore not “de minimus conduct when placed in the context of a criminal street gang.”

Regarding his background, character, and prospects, the court determined that defendant “has spent a lifetime committed to the Norteno criminal street gang,” “maintains a leadership role,” and “continues to function within that criminal structure, both in and out of prison.” The court thus considered the nature and circumstances of defendant’s prior strike convictions, the current offenses, and his background, character, and prospects. (*Carmony, supra*, at p. 377.) Where, as here, “ ‘the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling’ ” (*Id.* at p. 378.)

Indeed, based on the record in this case, we cannot conclude that the trial court’s decision was irrational or arbitrary. (*Carmony, supra*, 33 Cal.4th at p. 376.) Defendant has been involved in a Norteño gang since a young age. The probation report regarding defendant’s 1999 strike conviction for attempted murder reflects that the offense was related to his association with Nuestra Familia or Nuestra Raza. Regarding the instant case, the evidence at trial reflected that defendant is an active member of the Nuestra Familia gang, and that he is in a leadership position as regiment commander of Monterey County. In that position defendant collected, through subordinates such as Ramirez, the proceeds from the sale of controlled substances by other gang members. The money was used by defendant and also placed on the accounts of other Nuestra Familia gang members who were incarcerated. Drug sales were demonstrated at defendant’s trial to be an important part of the gang’s criminal activities. Defendant played a significant role in the gang’s drug sale operations and his involvement in the gang’s conspiracy to possess

controlled substances for sale formed the basis for at least one of his convictions in this case. In addition, defendant admittedly gave “advice” to other gang members who sought him out regarding gang-related matters. Defendant was also apparently able to function in his role as a gang member even while in custody. In view of the nature and circumstances of defendant’s present felonies and prior serious felony convictions, and the particulars of his background, character, and prospects, we believe the trial court acted well within its discretion in determining that defendant did not fall outside the spirit of the Three Strikes scheme and that his prior strikes should not be stricken. (*Carmony*, *supra*, at p. 377.)

Defendant contends that even if the trial court had stricken his strikes, he would “still be facing time for the underlying offense, the gang enhancement, and the 10 years for the [serious felony enhancements].”

A defendant’s sentence is “a relevant consideration when deciding whether to strike a prior conviction allegation; in fact, it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences. [Citation.]” (*People v. Garcia* (1999) 20 Cal.4th 490, 500 (*Garcia*).) For example, the fact that the defendant will already be serving a lengthy prison term is relevant to the defendant’s prospects for committing future crimes. (*Ibid.*)

In this case, the trial court determined that defendant “continues to function within that criminal structure [of the gang], both in and out of prison.” The record amply supports the inference that defendant is likely to continue his role in the gang and in its criminal activities regardless of how long he is imprisoned. Thus, although defendant might have been facing a lengthy prison sentence even in the absence of any prior strike convictions, his prospects for committing future offenses were not diminished by that fact. Under these circumstances, we do not believe it was an abuse of discretion for the court to deny defendant’s motion to strike his strikes. (Cf. *Garcia*, *supra*, 20 Cal.4th at p. 500.)

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MIHARA, J.